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G.C. Nagaraju Vs. the Executive Engineer, P.W.D., Mysore Division, Mysore and Another

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Court : Karnataka

Decided On : Jun-09-2000

Reported in : ILR2000KAR5033; 2001(1)KarLJ71

Judge : Chidananda Ullal, J.

Acts : [Limitation Act, 1963](#) - Sections 3- Schedule - Articles 18 and 55; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 80, Order 41, Rule 27; Madras Port Trust Act - Sections 110; [Constitution of India](#) - Article 136, 141; Limitation (Amendment) Act, 1908 - Schedule - Article 115, 120; [Contract Act, 1872](#) - Sections 73

Appeal No. : Regular First Appeal No. 442 of 1993

Appellant : G.C. Nagaraju

Respondent : The Executive Engineer, P.W.D., Mysore Division, Mysore and Another

Advocate for Def. : Sri P.G. Chengappa, Additional Govt. Adv.

Advocate for Pet/Ap. : Sri O. Shivaram Bhat, Adv.

Judgement :

1. This regular first appeal is directed against the judgment and decree dated 14-6-1993 in O.S. No. 605 of 1988 passed by the learned Principal Civil Judge, Mysore (hereinafter in brief referred to as 'Civil Judge'). In passing the same, the learned Civil Judge had dismissed the suit of the appellant on trial mainly on the point of limitation.

2. The appellant is represented by the learned Counsel, Sri O. Shivaram Bhat, whereas the contesting respondents are represented by the learned Additional Government Advocate, Sri P.G. Chengappa.

3. The facts of the case in nutshell are as hereunder:

4. That the appellant had resorted to a suit for recovery of Rs. 1,64,079.00 with interest at 21% till the date of recovery before the Court of Principal Civil Judge, Mysore. His case was that the respondent 1 had entrusted the work of construction of Horticultural Building at Beerwal in Nugu at an estimated cost of Rs. 65,000.00 in C.R. No. 31 of 1976-77 and also renovation and repairs to the agricultural building at the said place at an estimated cost of Rs. 2,05,000.00 in C.R. No. 34 of 1976-77. That, the appellant had executed the above said contractual work by negotiated tenders. That, the respondent 1 had agreed to pay at 12% over the scheduled rate of the year 1977-78 and that during the month of March 1979, the respondent 1 put the appellant in possession of the place of work. That, it was agreed upon between the appellant and the respondent 1 that on completion of the work, the respondent 1 should visit the places of work and after taking the measurements, the final bills would be prepared. That, it was also agreed upon between them that when the work was under progress, the respondent 1 should pay the contractual amount to the appellant to the extent to make the appellant convenient to progress the work entrusted to him. The details of the claim made in para 2 of the plaint are as follows:

5. That, it was also alleged that the respondent 1 had taken 5% of the deposit amount to the total sum of Rs. 12,050.00 and was liable to pay a sum of Rs. 8,300.00 towards lent charges and that after completion of the work, the respondent 1 having satisfied about the quality of work executed by the appellant, somehow evaded payment of the sum due under the pretext that the respondent

2-Government had not approved despite the letter addressed by the respondent 1 to the respondent 2 for approval of the claim of the appellant.

6. That, the appellant had received a copy of the letter dated 16-10-1985 from the respondent 1 addressed to the Assistant Executive Engineer, No. 3, sub-division, Nanjangud, marked as Ex. P. 2 instructing him to submit pre-final bills as already discussed with him by the respondent 1 and that despite the above, the appellant did not receive any communication with regard to the settlement of the bills and it is therefore he was forced to issue a legal notice to the respondents as contemplated under Section 80 of the CPC and that despite the service of legal notice-Ex. P. 3 on the respondents, there was no response either in causing reply or in the matter of settlement of the bills to him. That, therefore, the appellant was forced to file the suit before the learned Principal Civil Judge, Mysore claiming a sum total of Rs. 1,64,079.00, morefully set out as hereunder:

aDues in respect of construction of

Horticultural officeRs. 14,896b.Dues in respect of renovation

and repairs of agricultural office

buildingRs.34,090c.5% deposit amountRs.12,050d.Lead chargesRs.8,300

Total

Rs. 69,336

Interest on sum of Rs. 69,336.00

at 21% p.a. from April 1982

upto dateRs.94,643Notice charges100

Total

Rs. 1,64,079

7. That before the Trial Court though the respondents were represented by the learned Additional Government Pleader, they had neither filed the written statement nor challenged the evidence adduced by the appellant; needless to say that they had not chosen to adduce their side of the evidence either.

8. The following questions arose for consideration before the Trial Court:

(1) Whether the plaintiff had proved his claim over the defendants? (2) Whether the plaintiff was entitled to for any reliefs? (3) As to what order?

9. The Trial Court had answered the three questions as follows:

(1) In the affirmative.(2) In the negative.(3) As per the order.

10. Finally the learned Civil Judge though answered the first question in the affirmative, he had answered the second question in the negative as against the appellant and finally in passing the judgment and decree he had dismissed the suit of the appellant mainly on the point of limitation. Aggrieved by the judgment and decree dismissing the suit of the appellant by the Trial Court, he is before this Court in preferring the instant regular first appeal.

11. The sole point for my consideration in the instant RFA is whether the learned Civil Judge was correct in deciding the point of limitation as against the appellant or not?

12. It was vehemently argued by Sri O. Shivaram Bhat, the learned Counsel for the appellant, that the Trial Court had wrongly decided the case on the point of limitation taking that the respondent 1 was entrusted with the contractual work on fixed price basis. Accordingly to him, the case of the appellant squarely covered under Article 55 of the [Limitation Act, 1963](#) (hereinafter referred to as the 'Act') and as such the period of limitation of three years set out therein begins to run when contract was broken.

13. In support of his argument, Sri Bhat had also cited a decision of this Court in State of Mysore v Rathnam, wherein this Court held that the liability of the State to pay for the work done by a contractor whose tender for construction of a school

was accepted arose only when the final bill was actually prepared by the Department for acceptance of the contractor and thus, where the work was completed in 1950, the final bill was prepared on 16-10-1963 and the suit was filed for recovery of value of the work done by the contractor on 14-4-1966, the suit was held to be within time.

14. Nextly, it was also argued by Sri Bhat that plea of limitation by public authority to defeat just claim of citizen came to be deprecated by the Supreme Court in a decision in *Madras Port Trust v Hymanshu International by its Proprietor V. Venkatadri (dead) by L.Rs.*

15. While taking me through the aforesaid decisions, Sri Bhat had also pointed out that in the said decision, the Apex Court held that the Government and the Public Authorities should not take up technical pleas for the purpose of defeating the legitimate claims of the citizens and by so holding, the Supreme Court had also allowed the just claim of a party, no matter that in law he was not entitled to claim the same.

16. To sum up, the learned Counsel for the appellant prayed that the impugned judgment and decree of the Trial Court be set aside and this Court be pleased to allow the appeal filed by his party in decreeing the suit together with cost.

17. The learned Additional Government Advocate, Sri P.G. Chengappa, on the other side while opposing the claim of the appellant supported the impugned judgment and decree passed by the Trial Court. According to him, the Trial Court had rightly decided the case and the same is therefore not called for to be interfered in the instant appeal. He further argued that the appellant could have been cautious to institute the suit well in time as contemplated under Article 18 of the Act, if at all he had a genuine claim to make as against the respondents. Alternatively he had also submitted that the respondents had since filed an application numbered as LA. II for adducing evidence from their side in the instant appeal as contemplated under Order 41, Rule 27 of the CPC. He further prayed that the said application be allowed and the respondents be given an opportunity to adduce their side of the evidence before this Court in the instant appeal.

18. Before proceeding further, I feel it appropriate to dispose of the above application filed by the respondents to adduce evidence in the appeal. In filing the said application, the respondents sought for liberty of the Court to adduce in all six documents marked as Annexure-A to F to the application. They are: an agreement, estimate for construction, proof of payments made, measurement book, contract certificate and contract agreement. I have carefully gone through the said application. I have to point out in this context that the respondents before the Trial Court had not even filed written statement before the learned Civil Judge setting out their defence as against the money claim made in filing the suit; besides they have not challenged the evidence adduced by the appellant. Therefore, in my considered view, the question of production of evidence before this Court in the instant appeal does not arise at all. In that view of the matter, I have got no hesitation to reject the said application numbered as I.A. II. I order accordingly.

19. Now I come to the merit of the judgment and decree passed by the Trial Court. As observed by me as above, the Trial Court dismissed the suit of the appellant mainly on the ground of delay in resorting the suit. It is therefore obvious for me to consider that point to dispose of this appeal.

20. The Trial Court held that the claim of the appellant before the Trial Court was covered under Article 18 of the Act, whereas per contra, the learned Counsel for the appellant, Sri Bhat had argued that the case of the appellant was one covered under Article 55 of the Act. I have carefully applied my mind to the set of facts of the case vis-a-vis the point of limitation. While discussing the point of limitation, the Trial Court held as hereunder:

'7. Point No. 2:..... Admittedly and undisputedly, the suit or hand falls within the purview of Article 18 of the Limitation Act. It is true that in order to satisfy the requirement of Article 18 of the Limitation Act, certain necessary requirements are to be fulfilled. In other words, for the applicability of the article, the following ingredients are to be fulfilled, they are.-(1) The suit should be for the price of work done by the plaintiff for the defendant, (2) The said work should have been done at the request of the defendant, and (3) No time should have been fixed for payment

of price of that work. Undisputedly, from the available materials it is clear that the contractual work was done by the plaintiff at the request of the defendants and certain amount of price was fixed for that contract. It is also borne from the documentary evidence produced by the plaintiff alone that no time was fixed for payment of the price of that work. Therefore, Article 18 of the Limitation Act is squarely applicable to the facts of the case. Thus, a suit by a contractor for the price of work done under the contract is certainly governed under Article 18 of the Limitation Act'.

21. In view of the above conclusions reached finally the Trial Court had come to the conclusion that the claim made in the suit in the year 1988 was totally barred by time, when the work in question had been completed in the month of March 1982.

22. I have carefully gone through the discussion on the point of limitation by the Trial Court in paras 7 to 9 thereof. I have also carefully applied my mind to the same. Having done that exercise, I am but to disagree with the Trial Court for, in my considered view, the case of the appellant had squarely fallen under Article 55 of the Act as argued by the learned Counsel for the appellant, Sri Bhat. I say so for the reason that the specific case of the appellant in filing the suit before the Trial Court was to the effect that the works in question entrusted to him by the respondent 1 were by negotiated tender and as per the terms agreed upon by them thereon, on completion of the work, the respondent 1 had to visit the place of work and after taking the measurements, the final bill had to be prepared by the respondent 1; that pleading I find in para 2 of the plaint, wherein he had averred as hereunder:

'2. The above said works were entrusted on contract by the 1st defendant after negotiations. The above works were entrusted to the plaintiff by the 1st defendant at negotiated tender. The 1st defendant has agreed to pay at 12% over the scheduled rate of 1977-78. During the month of March 1979, the 1st defendant put the plaintiff in possession of the workplace. It was agreed between the plaintiff and the 1st defendant that on completion of the work, the 1st defendant should visit the place of work and after taking the measurements, the final bill should be

prepared.. ..'.

23. When I turn to the evidence adduced by the appellant before the Trial Court, I have observed that he had examined his power of attorney holder one Srinivasan as P.W. 1 and the said witness, had deposed with reference to Ex. P. 2-letter dated 16-10-1985 addressed by the respondent 1 to his subordinate as follows:

'Ex. P. 2 is the copy of letter addressed to Assistant Executive Engineer, No. 3 Sub-Division, Nanjangud by Executive Engineer, Mysore Division, Mysore, stating that on the available measurement, the bill may be sent. Even then Assistant Executive Engineer has not made any payment to me. So I issued a legal notice to him'.

24. In Ex. P. 2, the respondent 1 had addressed to the Assistant Executive Engineer as follows:

'ToThe Assistant Executive Engineer,No. 3, sub-division,Nanjangud.Sir

Sub: Representation of Sri G.C. Nagaraju,Contractor, Gundlupet (P.W.D. Contractor)In enclosing herewith the representation of Sri G.C. Nagaraju he is requested to submit the final bills based on the available pre-final bills as already discussed within during visit of the sub-division.Yours faithfully,Sd/-Executive Engineer,Mysore Division, Mysore16/x'.

25. From the above, it is clear that the specific case of the appellant before the Trial Court, both by way of pleading and evidence was that on completion of the buildings in the month of March 1982, the respondent 1 had to take the measurements and had to prepare the final bills. That in fact was the direction of the respondent 1 to his subordinate, Assistant Executive Engineer, a non-party to suit. If that was the case of the evidence and he had adduced his side of the evidence of the appellant before the Trial Court, it appears to me, that it was Article 55 of the Act that was applicable to the case in hand and not Article 18 of the Act as held by the Trial Court.

26. Article 55 of the Act reads as hereunder:

Description of suit

Period of limitation

Time from which period begins to run

'55. For compensation for the breach of any contract, express or implied not herein specially provided for.

Three years

When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach) is continuing when it ceases'.

27. I have concluded as above for the reason that, as agreed upon by the appellant on the one side and the respondents on the other, the measurement of the work had to be taken by the respondent 1 and it is thereafter the final bills had to be prepared. Admittedly, in the case in hand, no measurements had been taken by the respondent 1 as agreed upon and as such the final bill could not be prepared. As I see, it is in the pleading as well as in the evidence of the appellant before the Trial Court that he had consistently requested the respondent 1 to do the measurements of the works done and it is he who had failed to do that on the only plea that the entrustment of work had to be approved by the respondent 2.

28. The learned Counsel for the appellant had cited before me a decision of this Court in Rathnam's case, supra, wherein this Court had held that where the work was completed in the year 1950 and when the final bill was prepared on 16-10-1963, the suit filed for recovery of the value of the work done by the contractor on 4-4-1990 held to be within time. Though the said decision is not totally applicable to the case in hand, it appears to me that the ratio thereof is applicable to the same. Sri Bhat had also cited before me a reported decision in Madras Port Trust's case, supra, wherein in similar situation, the Supreme Court while abhorring the attitude of a public authority, under the Madras Port Trust Act for taking up technical plea of limitation observed therein that the technical plea should be taken only when the claim is not well-founded. In para 2 of the judgment, the Supreme

Court had held as hereunder:

'2. We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this section is one which the Court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a Government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the Court, but what we feel is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable. Here, it is obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (II of 1905)'.

29. From the above, it is clear that the Supreme Court had come down heavily on the public authorities in avoiding legitimate claim of the citizens by raising technical pleas such as limitation. Having gone through the said decision in Madras Port Trust's case, supra, I also feel that the ratio of the decision is equally applicable to the case in hand for the respondents in the instant case also raised only technical plea of bar of claim particularly when they admitted the claim of the appellant and it is for that reason that the respondent 1 had addressed a letter-Ex. P. 2 to the Assistant Executive Engineer as above and further admittedly addressed the respondent 2 for approval to clear the claims. On going through the said decision one may observe that the Supreme Court in allowing the above claim of the citizen had exercised its discretion vested in it under Article 136 of the Constitution, overruled the technical pleas of limitation raised by a public authority, the Madras

Port Trust.

30. To me it appears that there is a message to the respondents herein, the Government and its Authority too in the above decision of the Supreme Court, for in my considered view the claims of the appellant in the suit were tenable and as such legitimate ones and it is for that reason the respondents did not challenge the same before the Trial Court and they thus suffered a finding thereto on question No. 1 formulated by it referred to morefully in para 9 supra. Furthermore ratio of a case decided can be extended to other identical situations, factual and legal, without there being mechanical disregard to the rationale of that case. Let apart, as per Article 141 of the Constitution the law declared by the Supreme Court are binding on all Courts in the territory of India without there being any exception whatsoever.

31. Thus, I have reached, the conclusion that the suit filed by the appellant before the Trial Court was covered under Article 55 of the Act. To do that I have also placed reliance on the decision in the case of Dhapai v Dalla and Others, wherein, the Full Bench of the Allahabad High Court while considering good number of decisions rendered on the very same point herein involved, by different High Courts in India as well as the Full Bench of Lahore High Court (Mahomed Ghasita v Sirajuddin) in similar set of circumstances held that word 'compensation' used in Article 115 of the Limitation Act, 1908 has the same meaning as it has under Section 73 of the Contract Act and that, where the recovery of compensation for breach of contract within the specific time for the purpose of limitation the suit falls within the scope of Article 115 of the Limitation Act, 1908. In paras 18, 22 and 23 thereof, the Court held as follows:

'(C) Limitation Act (1908), Articles 115 and 120 - Word 'Compensation' in Article 115 includes money due under contract - Suit to recover such amount is governed by Article 115 and not Article 120, AIR 1962 All. 438, overruled - [Contract Act, 1872](#), Section 73 - Words and Phrases - Word 'Compensation'.

The word 'compensation' used in Article 115 has the same meaning as it has under Section 73 of Contract Act and it denotes a sum of money payable to a person on account of the loss or damage caused to him by the breach of contract.

Where the sum sought to be recovered was due to the plaintiff under a contract by which the defendant had bound himself to pay certain amount within the specified time and the suit was brought by the plaintiff for recovery of the amount because there had been a breach of contract on the part of the defendant the Article applicable to the suit would be Article 115 and not Article 120 - Rava v Budh Sen, overruled - Case-law discussed'.

(the above is quoted from the headnote in the decision)

32. I should add in this context that the provision in Article 115 of the Limitation Act, 1908 is verbatim and textually carried into Article 55 of the [Limitation Act, 1963](#) and it is for that reason, in my wisdom, I placed reliance on the above decision in Dhapai's case, supra.

33. Therefore, in my considered view, the breach in carrying out the terms of agreement by the respondent 1 in the matter of execution of the contractual work by negotiated tenders in the case in hand was continuing one and it is for that reason, the appellant had caused for issuance of legal notice-Ex. P. 3 as contemplated under Section 80 of the CPC calling upon both the respondents to settle the claim in question and that the copies of the said legal notice had since been served on the respondent 1 on 26-3-1985 and on the respondent 2 on 25-3-1985.

34. Hence, it appears to me that the cause of action for the suit in the instant case arose only after service of Ex. P. 3, legal notice, and had become barred only after three years from the said dates of service of legal notice-Ex. P. 3 since the same was legal necessity for institution of suit as against the respondents, they being the Government and its Authority and by issuing thereof, the appellant had demanded from the respondents to pay the sum due immediately. Since the suit in question came to be filed on 13-10-1988, it further appears to me that the same was well in time and not time barred in any way. In the result, the findings of the learned Civil Judge on question No. 2 on the negative as set out in para 9, supra to be upset now to hold the same in favour of the appellant and further to hold that the suit filed by the appellant was not time barred.

35. Hence, the point formulated by me as set out in para 11 above has to be answered in the negative and in favour of the appellant.

36. It is to be noted here that the learned Civil Judge had already held the question No. 1 i.e., whether the plaintiff had proved his claim over the defendants in the affirmative and now when I have held that the suit of the appellant was not time barred, it is natural for me to allow the instant appeal to decree the suit of the appellant.

37. For the aforesaid reasons, RFA herein filed is allowed. The judgment and decree dated 14-6-1993 in O.S. No. 605 of 1988 hereunder challenge are set aside and in allowing the instant RFA, the above suit of the appellant is decreed together with cost all through.

The Registry to draw the decree accordingly.

The Registry is also directed to forward a copy of the judgment hereinmade to the Chief Secretary to Government of Karnataka for his information and if he so feels it appropriate, he may also cause for issuance of necessary circular in this regard to all the heads of the departments and also to all the Deputy Commissioners of the Districts in the State, so that unnecessary litigations of the kind herein involved be avoided in future.

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